

Claims 2-10 and 12-31 stand rejected under 35 USC 112, second paragraph, because the Examiner views the expression "weight per unit area" as indefinite.

Those skilled in the art would have absolutely no doubt as to the meaning of "weight per unit area", and would require no guidance at all in understanding this ratio.

A multi ply-laminate is clearly characterized geometrically. It always has a large surface area and a thickness of each ply. Each ply has a specific weight. It does not require any skill at all to combine these elementary features for the determination of the ratio of weight per area.

The Examiner's calculations are done randomly and without any particular rational at all. The Examiner divides the result of Applicant's calculation (weight per square cm) by an area derived from 1 cm and the thickness of the ply in meter (resulting in an area of mixed units, m x cm).

The Examiner certainly must understand that any expert of whatsoever little skill would never mix these data in such way and expect a rational result.

Accordingly, the rejection of Claims 2-10 and 12-31 under 35 USC 112, second paragraph, should now be withdrawn.

Claims 31, 2, 3, 6-10, 13, 15, 17, 18, 19, 20, 23 and 25 stand rejected under 35 USC 103(a) as obvious over Dobreski (U.S. 5,334,428).

The description of the present invention is absolutely clear on the meaning of inner and outer (surface) ply (b), and their physical relationship towards each other with respect to MFR values. The present invention does not teach "any laminate wherein (any) one layer has a lower melt index than another layer" as stated by the Examiner.

Independent claim 31 recites an outer (surface) ply (b) and at least one inner ply (i), wherein **each** inner ply material has a MFR that is greater (= of lower viscosity) than the MFR of the material of **said** outer ply (b). In consequence, the MFR of ply (b) must be compared with the MFR of each of the inner plies (i_1, i_2, \dots).

In this regard, Applicants respectfully point out that their outer ply (b) is clearly understood to be the surface ply on the heat sealable surface of the sealing layer (page 11, lines 25-26).

Since according to the teaching of Dobreski, each of his outer layers have a higher MFR (lower viscosity) than the intermediate inner layer, Dobreski teaches something contrary to the claimed inventive heat sealable layer (I). This is already acknowledged by the Examiner in the last Office Action. Dobreski's teaching cannot possibly render the claimed invention obvious. This is especially true in view of the fact that, only because of the inventive sequence of plies (with the claimed properties) in the heat sealable layer, can the very improved heat sealing characteristics, like improved seam strength immediately after heat sealing and a hermetically sealed seam without the formation of channels in the same, be obtained.

Claims 26-29 stand rejected under 35 USC 103(a) as obvious over Dobreski in view of Simmons (US 5,273,809).

The Examiner cites Simmons for a teaching of a composition of a "non cling" layer.

However, nothing in the Simmons reference would overcome the deficiencies of the Dobreski reference, as discussed above. Specifically, nothing in Simmons would change the fact that Dobreski's outer layers have higher MFR's than his intermediate layer. This is the opposite of Applicants' product, wherein the inner layer has a higher MFR than the outer layer.

The rejection of Claims 26-29 under 35 USC 103(a) as obvious over Dobreski in view of Simmons should therefore be withdrawn.

Claim 16 stands rejected under 35 USC 103(a) as obvious over Dorbeski.

The Examiner says it would be obvious to use a metallocene catalyst because they allow for "better composition distribution" etc. The Examiner provides no evidence of obviousness, however, and the Examiner's own statement cannot take the place of evidence (in Re Lee, 61 USPQ 1430 (CAFC 2002)).

In addition, the deficiencies of this reference have already been pointed out with respect to the rejection of Claims 31, 2, 3, 6-10, 13, 15, 17, 18, 19, 20, 23 and 25 over the same reference, and Applicants' remarks regarding that rejection are incorporated herein by

reference.

The rejection of Claim 16 under 35 USC 103(a) as obvious over Dobreski should accordingly be withdrawn.

Claims 31, 2-10, 12, 13, 14, 17, 18, 19, 23, 25, 26, 27 and 28 stand rejected under 35 USC 103(a) as obvious over Paleari et al. (U.S. 6,110,570) in view of Hodgson, Jr. (U.S. 5,206,075).

Paleari teaches multi layer films of the structure (d) // (c) // (b) // (a) of which **only** the outer ply=surface ply (a) is heat sealable and composed of a material with a melt index of 3 to 6g/10 min (examples 1-21) and the inner plies (b) - (d) composed of a material with a fractional melt index that is lower than 1g/10 min according to the definition in column 3, lines 14-18.

Therefore, Paleari's teaching and all of its numerous examples teach only one heat sealable ply, namely the outer ply composed of a material with a MFR greater than the MFR value of each of the inner plies. Those skilled in the art would have no motivation or suggestion to substitute the outer heat sealable ply with a material having a MFR value far below 1g/10 min.

A preferred embodiment of Paleari relates - among others - to a **kind or class** of polymers used as material for the heat sealable outer layer which is also mentioned in the

patent specification of Hodgson as heat sealable material. But his material - also being of the kind mentioned in the Paleari patent - has a MFR of 0.5 to 7.5g/10 min. There is no hint disclosed why one skilled in the art should use this material according to the teaching of Paleari in a manner to obtain an arrangement of a heat sealable layer consisting of several plies according to the present invention.

But even if one assumes a combination of Paleari and Hodgson, it is obvious that only outer heat sealable plies of Hodgson with melt index in a range 0.5 to 0.9 g/10 min (about 5% of the original range) even stand a chance of having a MFR that would be lower than the melt indexes of both inner plies (b) - (d) of Paleari (which must be lower than 1).

Consequently, it requires hindsight reconstruction of Applicant's teaching to purposefully combine both inner plies, (b) and (d), of Paleari, which are both limited to extremely low MFR values, with an outer ply according to Hodgson, the latter being selected from one extremely small subpopulation of outer plies in a multitude of outer plies with a wide range of melt indexes.

Due to the required low melt index limits of two of three inner plies (b) and (d) according to Paleari and due to the large number of examples cited by Paleari that teach away from laminates according to the invention, it is clear that a person skilled in the art would derive no suggestion or motivation from Paleari or Hodgson to purposefully select inner plies according to Paleari and an outer ply with a melt index at the extreme end of a broad range of melt indexes as taught by Hodgson.

The Examiner asserts that layers a) and b) of Paleari would be inner layers according to the present invention and layer d) would read on the outer layer. From the teaching of Paleari, it is absolutely clear that d) is a further inner layer (next to layers b and c) with a melt index lower than 1 and is never a heat sealable layer. Only layer a) of Paleari is heat-sealable and doubtlessly corresponds to the outer ply (b) of the present invention.

In consequence, outer ply (b), according to the invention, is a heat-sealable layer which would have to be compared to (a) in Paleari's teaching (see abstract).

Therefore, no person reading Paleari, with or without Hodgson, Jr. could ever be led to Applicant's novel heat sealable layer, where the outer ply (b) has a lower MFR than the inner layer (i).

The rejection of Claims 31, 2-10, 12, 13, 14, 17, 18, 19, 23, 25, 26, 27 and 28 under 35 USC 103(a) as obvious over Paleari in view of Hodgson, Jr. should be withdrawn.

Claims 31, 2-10, 12, 13, 15, 17-21, 23, 25-28 and 30 stand rejected under 35 USC 103(a) as obvious over Chum (US 5,089, 321).

Chum, however teaches that the MFR of the inner layer should be less than the MFR of the outer layer. The foregoing remarks regarding Dobreski therefore apply equally well to this rejection.

Chum could not possibly lead a heat sealing layer having an outer ply that has a

lower MFR than the inner ply.

The rejection of Claims 31, 2-10, 13, 15, 17-21, 23, 25-28 and 30 under 35 USC 103(a) should accordingly now be withdrawn.

Claim 24 stands rejected under 35 USC 103(a) as obvious over Chum.

The foregoing comments regarding the rejection of Claims 31 etc. over Chum apply equally well to this rejection.

Chum neither teaches nor suggests a heat sealable laminate wherein the outer ply has lower MFR than the inner ply.

The rejection of Claim 24 under 35 USC 103(a) as obvious over Chum should therefore now be withdrawn.

In view of the above remarks, it is believed that Claims 2-10 and 12-31 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested, and the allowance thereof is courteously solicited.

CONDITIONAL PETITION FOR EXTENSION OF TIME


If any extension of time for this response is required, applicants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No.

14-1263.


Respectfully submitted,
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I hereby certify that this correspondence is being
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